

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTWAN M. GREEN,

Plaintiff,

v.

SERGEANT S. EVANS AND DEPUTY
C. MANNS,

Defendants.

DECISION AND ORDER

6:21-CV-06454 EAW

INTRODUCTION

Pro se plaintiff Antwan M. Green (“Plaintiff”) initiated this action pursuant to 42 U.S.C. § 1983 on June 18, 2021. (Dkt. 1). Currently pending before the Court is a Report and Recommendation (the “R&R”) issued by United States Magistrate Judge Mark W. Pedersen recommending the dismissal of Plaintiff’s claims with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Dkt. 41). For the reasons set forth below, the Court adopts the R&R in its entirety. As a result, the case is dismissed with prejudice.

BACKGROUND

As set forth in the R&R, on August 16, 2023, Judge Pedersen scheduled a conference pursuant to Federal Rule of Civil Procedure 16 for September 27, 2023, and issued an order requiring the parties to meet and confer pursuant to Federal Rule of Civil Procedure 26(f) and to file a proposed discovery plan. (Dkt. 41 at 5). Defendants filed a

proposed discovery plan, but there was no indication that Plaintiff took any part in drafting it. (*Id.*). Plaintiff did not appear at the Rule 16 conference. (*Id.*).

At Judge Pedersen's direction, the Clerk of Court issued an Order to Show Cause on September 27, 2023, requiring Plaintiff to show cause in writing why the matter should not be dismissed for failure to prosecute. (Dkt. 40). Plaintiff's deadline to respond was October 27, 2023. (*Id.* at 1). Plaintiff was expressly warned that failure to comply with the Order to Show Cause would "result in the dismissal of this action with prejudice pursuant to Fed. R. Civ. P. 41(b)." (*Id.*). The Order to Show cause was mailed to Plaintiff at his address of record and was not returned as undeliverable. Plaintiff did not respond to the Order to Show Cause, nor has he otherwise contacted the Court. (*See* Dkt. 41 at 6).

On January 26, 2024, Judge Pedersen issued the R&R, recommending that the case be dismissed with prejudice for failure to prosecute pursuant to Rule 41(b). (Dkt. 41). The R&R was mailed to Plaintiff at his address of record and was not returned as undeliverable. No party filed objections to the R&R.

DISCUSSION

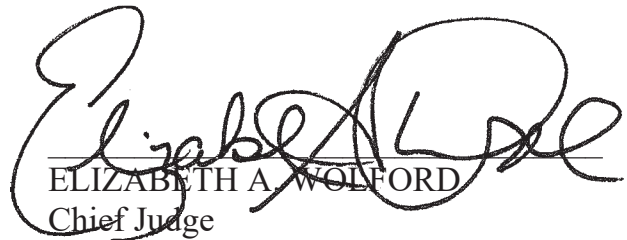
Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the R&R. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). Notwithstanding the lack of objections, the Court has conducted a careful review of the

R&R, as well as the prior proceedings in the case, and finds no reason to reject or modify the R&R. Accordingly, the matter will be dismissed with prejudice for failure to prosecute.

CONCLUSION

For the foregoing reasons, the Court adopts the R&R (Dkt. 41) in its entirety and dismisses the case with prejudice for failure to prosecute pursuant to Rule 41(b). The Clerk of Court is hereby directed to enter judgment in favor of Defendants and close the case.

SO ORDERED.


ELIZABETH A. WOLFORD
Chief Judge
United States District Court

Dated: April 2, 2024
Rochester, New York